

(ARRA), Public Law 111-5, this part temporarily expands authority provided in section 3374, title 42, United States Code, to provide assistance to: Wounded, Injured, or Ill members of the Armed Forces (30% or greater disability), wounded Department of Defense (DoD) and Coast Guard civilian homeowners reassigned in furtherance of medical treatment or rehabilitation or due to medical retirement in connection with their disability, surviving spouses of fallen warriors, Base Realignment and Closure (BRAC) 2005 impacted homeowners relocating during the mortgage crisis, and Service member homeowners undergoing Permanent Change of Station (PCS) moves during the mortgage crisis. This authority is referred to as “Expanded HAP.”

(b) Establishes policy, authority, and responsibilities for managing Expanded HAP and defines eligibility for financial assistance.

(c) In accordance with this part, The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) has overall responsibility and, through the Deputy Under Secretary of Defense for Installations and Environment (DUSD(I&E)), provides oversight for this program. The Army, acting as the DoD Executive Agent for administering the HAP, uses the Headquarters, U.S. Army Corps of Engineers (HQUSACE) to implement the program.

§ 239.2 Applicability and scope.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the U.S. Coast Guard), the Chairman of the Joints Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the “DoD Components”). This part for Expanded HAP is applicable until September 30, 2012, or as otherwise extended by law.

§ 239.3 Policy.

(a) It is DoD policy, in implementing section 3374 of title 42, United States Code, as amended by Section 1001 of the ARRA (Public Law 111-5), that those eligible (see § 239.6 of this part) to par-

ticipate in the HAP and Expanded HAP are treated fairly and receive available benefit as quickly as practicable.

(b) Detailed regulations regarding the determination of available benefits, can also be found in the circular (EC 405-1-18a) published by the HQUSACE, as directed by the Secretary of the Army as the DoD Executive Agent for the Expanded HAP. Changes to the Engineering Circular for the Expanded Homeowners Assistance Program will be submitted for OMB review as required.

§ 239.4 Definitions.

(a) *Armed Forces.* The Army, Navy, Air Force, Marine Corps, and Coast Guard (see section 101(a) of Title 10, United States Code, as stipulated in section 1001(p) of Pub. L. 111-5).

(b) *Deficiency judgment.* Judicial recognition of personal liability under applicable State law against a Service member whose property was foreclosed on or who otherwise passed title to another person for a primary residence through a sale that realized less than the full outstanding mortgage balance.

(c) *Deployment.* Performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on garrison or installation duty at the member’s permanent duty station, or home port, as the case may be.

(d) *Eligible mortgage.* A mortgage secured by the primary residence that was incurred to acquire or improve the primary residence. For a mortgage refinancing the original mortgage(s) or for a mortgage incurred subsequent to purchasing the property, funds from the refinanced or subsequent mortgages must be traced to the purchase of the primary residence or have been used to improve the primary residence. Funds from a refinanced or subsequent mortgage that were used for other purposes are not eligible and may not be considered. For permanently reassigned members of the Armed Forces, all payments on an eligible mortgage must be current as of the report-not-later-than date.

(e) *Forward deployment.* Performing service in an area where the Secretary

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of Defense or the Secretary's designee has determined that Service members are subject to hostile fire or imminent danger under Section 310(a)(2) of title 37, United States Code.

(f) *Market impact zone*. The county, city, or parish in which the primary residence is located.

(g) *Primary residence*. The one- or two-family dwelling from which employees or members regularly commute (or commuted) to their primary place of duty. Under § 239.6(a) and (b) of this part, the relevant property for which compensation might be offered must have been the primary residence of the member or civilian employee at the time of the relevant wound, injury, or illness. The first field grade officer (or civilian equivalent) in the member or employee's chain of command may certify primary residence status.

(h) *Prior fair market value (PFMV)*. The PFMV is the purchase price of the primary residence.

(i) *Reasonable effort to sell*. Applicant's primary residence must be listed, actively marketed, and available for purchase for a minimum of 120 days. With regard to marketing, applicant must demonstrate that the asking price was within the current market value of the home as determined by the USACE automated value model (AVM) for no less than 30 days. It is the applicant's responsibility to explain marketing efforts by detailing how the asking price was gradually reduced until it reached the true current fair market value (*i.e.*, maintaining a log containing date and asking price recorded over period of time indicating number of visits by prospective buyers and offers to purchase). If an applicant is unable to sell the primary residence, the HQUSACE will determine whether efforts to sell were reasonable.

(j) *Permanent change of station (PCS)*. The assignment or transfer of a member to a different permanent duty station (PDS), to include relocation to place of retirement, under a competent authorization/order that does not specify the duty as temporary, provide for further assignment to a new PDS, or direct the military service member return to the old PDS.

§ 239.5 Benefit elections.

Section 3374 of Title 42, United States Code, as amended by Section 1001 of the ARRA, Public Law 111–5, authorizes the Secretary of Defense, under specified conditions, to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one- or two-family dwelling owned by designated individuals.

(a) *General Benefits*: (1) If an applicant is unable to sell the primary residence after demonstrating reasonable efforts to sell (*see* Definitions, § 239.4(i) of this part), the Government may purchase the primary residence for the greater of:

(i) The applicable percentage (identified by applicant type in § 239.5(a)(4)) of the PFMV of the primary residence, or

(ii) The total amount of the eligible mortgage(s) that remains outstanding.

(2) If an applicant sells, has sold, or otherwise has transferred title of the primary residence, the benefit calculation shall be the amount of closing costs plus an amount not to exceed the difference between the applicable percentage of the PFMV and the sales price.

(3) If an applicant is foreclosed upon, the benefit will pay all legally enforceable liabilities, directly associated with the foreclosed mortgage, for example, a deficiency judgment.

(4) *Applicable Percentage*. (i) If an applicant is eligible under § 239.6(a)(3) or (4) and sells the primary residence, the applicable percentage shall be 90% of the PFMV. In addition, closing costs incurred on the sale may be reimbursed.

(ii) If an applicant is eligible under § 239.6(a)(3) or (4) and is unable to sell the primary residence after demonstrating reasonable efforts to sell, the applicable percentage shall be 75% of the PFMV. Closing costs incurred on the sale will not be reimbursed.

(iii) If an applicant is eligible under § 239.6(a)(1) or (2), the applicable percentage, regardless of whether the applicant sells the primary residence, shall be 95% of the PFMV. In addition, closing costs incurred on the sale may be reimbursed.